

Strong Medicine: Patent Damages for Unpatented Articles

By Matt Walters

A right is only as strong as the remedy enforcing the right. Moral principles aside, this old legal adage succinctly identifies the proposition that if a plaintiff's best possible outcome of a lawsuit is relatively small, the underlying right is not worth much. Fortunately, the breadth of damages provided for patent infringement makes a patent's exclusivity worth fighting for. Indeed, patent infringement judgments can easily exceed tens of millions of dollars.

Why are these judgments so large? One reason is that damages for patent infringement can be quite broad. Courts have interpreted the statute governing patent damages to be expansive. In fact, the statute states that damages must be adequate to compensate for infringement and otherwise only provides a floor for the damages a patentee may recoup. Notably, upon a finding of infringement, a patentee is entitled to no less than a reasonable royalty for the infringing conduct.

But did you know that damages for patent infringement can even account for lost sales of collateral, unpatented goods that are sold with a patented device? Under the so-called "entire market value rule," a patent owner may collect damages for unpatented devices sold with a patented article if the unpatented device is part of the same functional unit as the patented article. In this manner, a patent owner is adequately compensated for its entire foreseeable loss as a result of infringement.

Determining whether a patent owner can recoup damages under the entire market value rule is, however, a fact intensive inquiry that requires the examination of a host of facts. In light of this unpredictability and the possibility of increasing damage awards, Congress is facing increasing pressure to limit the availability of patent damages. For more information about current legislation to limit patent damages, please read the article by Randall Schwartz included in this newsletter.

If you have any questions or concerns about the scope of patent damages, please contact us for more information.

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